

## Message Text

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CEQ-01 CG-00 CIAE-00 COME-00 DLOS-06 DODE-00 DOTE-00  
EB-08 EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00 H-01  
INR-07 INT-05 IO-13 JUSE-00 L-03 NSAE-00 NSC-05  
NSF-01 OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15  
SAL-01 NSCE-00 SSO-00 USIE-00 INRE-00 SAJ-01 /115 W  
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O P 251708Z FEB 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC IMMEDIATE 5940  
INFO USMISSION EC BRUSSELS PRIORITY  
AMEMBASSY LONDON PRIORITY  
AMEMBASSY PARIS PRIORITY  
AMEMBASSY MOSCOW  
AMEMBASSY BERLIN  
USMISSION USBERLIN  
USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 03 BONN 03508

E.O. 11652: GDS  
TAGS: PFOR PGOV WB EEC UR GW US UK FR  
SUBJECT: INCLUSION OF BERLIN IN EC-SOVIET FISHERIES  
AGREEMENT

REFS: (A) BONN 3413; (B) STATE 37507 (C) STATE 39882

BEGIN SUMMARY. THE NEXT MOVE IS UP TO THE GERMANS IN  
THE CONTINUING IMPASSE WITH THE BRITISH AND FRENCH OVER  
HOW FAR THE EC SHOULD GO IN CLARIFYING THE INCLUSION  
OF BERLIN IN THE FISHERIES AGREEMENT WITH THE SOVIETS.  
SHOULD THE GERMANS DECIDE THAT THE BERLIN/EC RELATION-  
SHIP MUST BE RESOLVED ONCE AND FOR ALL IN THESE NEGOTIA-  
TIONS, WE DO NOT EXCLUDE THE POSSIBILITY THAT THEY WILL  
INVOKE THE DECISIONS REACHED AT THE DECEMBER QUADRIPAR-  
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TITE MINISTERIAL MEETING AND CALL UPON THE US TO SIDE  
WITH THEM. IN PREPARATION FOR SUCH AN EVENTUALITY, THIS  
MESSAGE REVIEWS THE ISSUES. END SUMMARY.

1. ACCORDING TO THE UK AND FRENCH EMBASSIES HERE,  
YESTERDAY'S DEMARCHES BY THE GERMAN AMBASSADORS IN  
LONDON AND PARIS (TO THE FCO PERMANENT UNDER SECRETARY

AND QUAI SECRETARY GENERAL SOUTOU, RESPECTIVELY)  
PRODUCED NO MOVEMENT ON EITHER SIDE. PLANS FOR A  
DEMARCHE IN BONN BY THE TWO AMBASSADORS HAVE CONSEQUENTLY  
BEEN CANCELLED. THE GERMANS ARE NOW CONDUCTING INTERNAL  
POLICY DELIBERATIONS AND HAVE SPOKEN OF A BONN GROUP  
MEETING TONIGHT OR SATURDAY MORNING. AT THE MOMENT WE  
SEE NO USEFUL INTERMEDIARY ROLE FOR THE US, BUT BECAUSE  
WE COULD VERY QUICKLY FIND OURSELVES CAUGHT IN THE  
MIDDLE WE SUMMARIZE HERE THE POSITIONS AND THE ISSUES  
AS WE SEE THEM.

2. THE UK POSITION. THE BRITISH ARE CORRECT ON SEVERAL  
COUNTS:

-- BERLIN HAS NO FISHING FLEET, AND IT IS OF NO  
IMMEDIATE PRACTICAL SIGNIFICANCE WHETHER THERE IS  
CLARITY ON THE APPLICABILITY OF THIS PARTICULAR AGREE-  
MENT TO BERLIN.

-- THE FISHERIES AGREEMENT IS IMPORTANT TO THE UK,  
AND IT WOULD BE DIFFICULT IF NOT IMPOSSIBLE TO EXPLAIN  
TO THE PUBLIC WHY THE BERLIN ISSUE MADE IT IMPOSSIBLE  
TO CONCLUDE AN AGREEMENT.

-- BY INSISTING ON UNAMBIGUOUS SOVIET ACCEPTANCE  
OF THE POINT, THE GERMANS THREATEN THE SUCCESS OF THE  
NEGOTIATIONS.

3. ON THE OTHER HAND, AGAINST THE BACKGROUND OF THE  
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BONN GROUP STUDY OF THE PROBLEMS IN FRG REPRESENTATION  
OF THE INTERESTS OF BERLIN ABROAD, WHICH WAS CONDUCTED  
LAST FALL, AND THE QUADRIPARTITE DISCUSSIONS IN  
BRUSSELS IN DECEMBER, IT APPEARS TO US THAT HIBBERT  
WAS BEING SOMEWHAT DISINGENUOUS IN HIS PRESEN-  
TATION OF THE PROBLEM IN WASHINGTON LAST WEEK (REF C).  
HIBBERT'S REFERENCE TO THE "GERMAN DESIRE TO FORCE THE  
ISSUE IN THE CONTEXT OF EC/CEMA NEGOTIATIONS" AND  
HIS STATEMENT THAT THE "PROPER WAY TO MAKE THE POINT  
ON BERLIN REPRESENTATION WAS ON DIRECT ELECTIONS"  
SEEMED TO DISREGARD THE EARLIER DISCUSSIONS AND THE  
AGREEMENTS REACHED IN BRUSSELS.

4. THE FRG POSITION. THE GERMANS OF COURSE  
UNDERSTAND THE DIFFICULTIES THEIR POSITION IS  
CREATING FOR THE BRITISH. AS ONE FOREIGN OFFICE  
CONTACT PUT IT, ENGLAND DOES NOT WANT TO PLAY THE ROLE  
OF ICELAND IN THE NEXT COD WAR. NEVERTHELESS, THE  
GERMAN POSITION IS ALSO QUITE UNDERSTANDABLE:

-- THROUGHOUT LAST YEAR'S ELECTION CAMPAIGN,  
GENSCHER MADE IT CLEAR THAT THE FRG WOULD SIGN NO  
TREATIES IN WHICH BERLIN WAS NOT FULLY INCLUDED.

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INFO USMISSION EC BRUSSELS PRIORITY  
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USMISSION USBERLIN  
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C O N F I D E N T I A L SECTION 02 OF 03 BONN 03508

-- THE GERMANS NOW REALIZE THAT THE LAST  
COMPROMISE AGREEMENT THEY REACHED WITH THE SOVIETS ON  
THIS POINT WAS ILLUSORY. THE SO-CALLED FRANK-FALIN  
CLAUSE, USED IN FRG TREATIES WITH THE EAST, WHICH  
PROVIDES THAT THE TREATY "WILL APPLY TO BERLIN IN  
ACCORDANCE WITH BE QA," HAS ALLOWED THE SOVIETS TO  
DISPUTE THE APPLICATION OF CERTAIN TREATIES TO BERLIN  
BY SAYING THAT IT IS NOT IN ACCORDANCE WITH ONE OR  
ANOTHER PROVISION OF THE QA. THE GERMANS ARE THUS  
INSISTING THAT THEY WILL NO LONGER SETTLE FOR AMBIGUITY.

-- DESPITE THE LACK OF SPECIFIC BERLIN FISHING  
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INTERESTS, FOR THE GERMANS INCLUSION OF BERLIN IN THE EC/SOVIET AGREEMENT IS IMPORTANT NOT ONLY BECAUSE OF THE PRINCIPLE OF LEGAL UNITY BUT ALSO BECAUSE OF THE PRECEDENT THAT WILL BE CREATED. THIS AGREEMENT IS PRESUMABLY THE FIRST OF MANY BETWEEN THE EC AND CEMA COUNTRIES, AND UNLESS THE BERLIN ISSUE IS SETTLED NOW THE GERMANS SEE NO HOPE THAT THESE AGREEMENTS WILL EVER BE APPLIED TO BERLIN. SOME OF THEM MAY BE OF CONSIDERABLE PRACTICAL IMPORTANCE FOR BERLIN.

5. THE FRENCH POSITION. WHILE THE FRENCH POSITION IS NOT QUITE AS EXTREME AS THAT OF THE BRITISH, THE FRENCH BELIEVE THEY HAVE ALREADY MADE ONE COMPROMISE WITH THE GERMANS AND ARE PREPARED TO GO NO FURTHER. WE ARE TOLD THAT AT THE STORMY SESSION BETWEEN SAUVAGNARGUES AND GENSCHER LAST NOVEMBER OVER HANDLING OF THE BERLIN ISSUE IN THE EC/CEMA NEGOTIATIONS, SAUVAGNARGUES FINALLY AGREED THAT THE NAME OF BERLIN COULD BE MENTIONED BY WAY OF EXPLANATION OF THE AREA OF APPLICATION CLAUSE IN THE DRAFT TREATY. THEY BELIEVE THE GERMANS ARE NOW GOING FURTHER THAN AGREED BY INSISTING ON A SUPPLEMENTARY "INTERPRETATIVE STATEMENT."

6. THE SOVIET POSITION. THE SOVIET POSITION IS EQUALLY CLEAR. DESPITE THE FACT THAT THE SOVIETS DID NOT MAKE AN ISSUE OF BERLIN'S INCLUSION IN THE AREA OF APPLICATION OF THE EC TREATIES DURING THE QUADRIPARTITE AGREEMENT NEGOTIATIONS, THEIR OBJECTION TO THIS INCLUSION HAS BECOME INCREASINGLY STRIDENT OVER THE LAST TWO YEARS. WE HAVE LONG RECOGNIZED THAT THIS WILL BE ONE OF THE MAJOR BERLIN ISSUES FOR THE FUTURE, AND THE SOVIET PROTESTS ON THE QUESTION OF INCLUSION OF BERLINERS IN THE DIRECTLY-ELECTED PARLIAMENT IN AUGUST AND NOVEMBER 1976 MAKE IT APPEAR THAT THEY HAVE THROWN DOWN THE GAUNTLET ON THIS ISSUE.  
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TO COMPLICATE THE MATTER IN THE PRESENT CASE, IT IS NOT A QUESTION OF EXTENDING AN FRG TREATY TO BERLIN, BUT RATHER ONE WHICH IS BEING NEGOTIATED ENTIRELY BY THE EC COMMISSION. THE SOVIET POSITION ON THIS IS ALSO CLEAR: IN PROTESTING

THE ESTABLISHMENT IN BERLIN OF THE EC VOCATIONAL TRAINING CENTER, THE SOVIETS INFORMED NOT ONLY THE ALLIES BUT ALSO THE INDIVIDUAL MEMBERS OF THE COMMUNITY THAT THE EC HAD NO COMPETENCE TO SPEAK FOR OR TAKE DECISIONS CONCERNING BERLIN.

7. UP UNTIL NOW SOVIET PROTESTS ON MATTERS CONCERNING BERLIN AND THE EC HAVE HAD NO PRACTICAL EFFECT. THIS TIME, HOWEVER, THEY ARE IN A POSITION TO PUT TEETH IN THEIR ARGUMENTS BY SIMPLY REFUSING TO SIGN THE AGREEMENT. WHETHER THEY WOULD DO SO OR NOT DEPENDS UPON HOW BADLY THEY NEED THE FISHING TREATY. IT IS ON THEIR RESPECTIVE ASSESSMENTS OF THIS ISSUE THAT THE BRITISH AND THE GERMANS DIFFER MOST WIDELY.

8. ALLIED/FRG POLICY. BACKING AWAY FROM THE IMMEDIATE ISSUE, IT IS WORTH RECALLING THE DECISIONS TAKEN IN DECEMBER BY THE FOUR MINISTERS. WHILE THE FRG HAS NOT YET REFERRED IN THE BONN GROUP TO THE REPRESENTATION STUDY, IT IS NO DOUBT IN THE BACK OF GERMAN THINKING. SEVERAL OF THE OPTIONS IN THAT STUDY WHICH MINISTERS APPROVED ARE RELEVANT:

-- IN THE SECTION ON INCLUDING BERLIN IN EAST-WEST NEGOTIATIONS, INCLUDING THOSE BETWEEN THE EC AND CEMA, THE APPROVED RECOMMENDATION WAS THAT "ALL AGREEMENTS SHOULD MAKE SATISFACTORY PROVISION FOR THE INCLUSION OF BERLIN, PROVIDED THAT THIS IS NOT PRECLUDED BY THE NATURE OF THE AGREEMENT CONCERNED" (PARA 22 OF THE STUDY). THE LATTER PROVISIO WAS

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C O N F I D E N T I A L SECTION 03 OF 03 BONN 03508

INTENDED SPECIFICALLY TO EXCLUDE DEFENSE-RELATED  
AGREEMENTS SUCH AS MBFR.

-- THE FOLLOWING SECTION, ON BERLIN AND THE EC,  
NOTED THAT THE PARTICIPATION OF BERLIN IN THE  
PROGRESSIVE DEVELOPMENT OF THE COMMUNITY WAS ESSENTIAL  
TO THE MAINTENANCE OF THE VIABILITY OF THE CITY. THE  
APPROVED RECOMMENDATION FOR THE WESTERN APPROACH TO  
THIS BASIC PROBLEM WAS "NOT TO MAKE ANY CONCESSION  
ON THE PRINCIPLE THAT BERLIN REMAINS INCLUDED IN THE  
AREA OF APPLICATION OF THE EC TREATIES SUBJECT TO ALLIED  
RIGHTS AND RESPONSIBILITIES REMAINING UNAFFECTED"  
(PARA 24 OF THE STUDY).  
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9. INDISCUSSING THE STUDY IN BRUSSELS, THE ALLIED  
SENIOR OFFICIALS ACCEPTED AND REPORTED TO MINISTERS  
THE GERMAN BELIEF THAT THE ISSUE OF INCLUSION OF BERLIN  
IN EC DEVELOPMENTS SHOULD BE FOUGHT OUT WITH THE  
SOVIETS IN THE CONTEXT OF EC/CEMA NEGOTIATIONS, RATHER  
THAN ON THE EUROPEAN PARLIAMENT ISSUE. THE POSITION  
THE BRITISH ARE NOW TAKING STEMS FROM SERIOUS SECOND  
THOUGHTS ON THE DECISIONS REACHED IN BRUSSELS AND  
A DESIRE, IN EFFECT, TO REOPEN THOSE NEGOTIATIONS.

10. WE CANNOT FAULT THE BRITISH FOR DOING SO GIVEN  
WHAT IS AT STAKE FOR THEM IN THE FISHERIES  
NEGOTIATIONS. IN DECEMBER THEY WERE PRESUMABLY LOOKING  
AT THE PROBLEM IN THE ABSTRACT, WHEREAS NOW THEY ARE

FACED WITH REALITY. THE GERMANS, HOWEVER, ARE  
SHOWING THAT THEY MEANT WHAT THEY SAID IN DECEMBER,  
AND IT IS IN THIS CONNECTION THAT WE WOULD BE  
OBLIGED IF THEY CALLED UPON US TO REAFFIRM THAT WE,  
TOO, WERE SERIOUS.

11. THEY ARE OBVIOUSLY WEIGHING THE POSSIBLE FALLOUT  
FOR BERLIN, IF THEY SHOULD DECIDE TO SETTLE FOR  
ANOTHER AMBIGUOUS AGREEMENT, VERSUS THE FALLOUT WITH  
THEIR PARTNERS IN THE EC IF THEY STAND FAST.

12. BECAUSE IT IS DIFFICULT FOR THE US TO JUDGE  
THE RELATIVE PRESSURES MOTIVATING THE TWO SIDES TO  
COME TO AN AGREEMENT ON FISHING, THE POSITION THE  
DEPARTMENT HAS TAKEN (REF B) SEEMS THE ONLY FEASIBLE  
ONE FOR THE MOMENT. IF, HOWEVER, THE FRG DECIDES  
THAT IS IS NOW OR NEVER FOR RESOLVING THE BERLIN/EC  
ISSUE, WE THINK IT LIKELY THAT THEY WILL CALL UPON  
US, IN THE NAME OF OUR RESPONSIBILITIES FOR THE  
VIABILITY OF BERLIN, TO SIDE WITH THEM AGAINST THE  
BRITISH AND THE FRENCH.

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